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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
10

11 SANTA PAULA ANIMAL RESCUE
CENTER (S.P.A.R.C.)

12 Petitioner,

13 v.

14 COUNTY OF LOS ANGELES
15 DEPARTMENT OF ANIMAL CARE AND
CONTROL (DACC)

16 Respondent.
17

CASE NO. BS 144497

HON. LUIS A. LAVIN

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION; MEMORANDUM OF
POINTS AND AUTHORITIES,
DECLARATION OF DIANE C. REAGAN**

*[Filed concurrently with Opposition to Motion
for Preliminary Injunction]*

DATE: SEPTEMBER 5, 2013

TIME: 1:30 p.m.

PLACE: Department 82

ACTION FILED: 8/12/13

21
22 TO PETITIONER AND TO THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on September 5, 2013, at 1:30 p.m., or as soon thereafter as
24 the matter can be heard in Dept. 82 of the above-entitled court, located at 111 N. Hill St., Los
25 Angeles, California 90012, Respondent COUNTY OF LOS ANGELES ("County"), will and
26 hereby asks the court to take judicial notice of documents in this action in accordance with
27 Evidence Code section 452.

28 ///

1 The Request for Judicial Notice will be made and based upon this Notice, the Declaration
2 of Diane C. Reagan attached hereto, the Memorandum of Points and Authorities attached hereto,
3 the Opposition to Motion for Preliminary Injunction filed concurrently herewith, the records,
4 papers and pleadings filed in this action and upon such argument as counsel may present at the
5 time of hearing on the Motion for Preliminary Injunction.

6 DATED: August 28, 2013

Respectfully submitted,

7
8 JOHN F. KRATTLI
County Counsel

9
10 By Diane C. Reagan
11 DIANE C. REAGAN
Principal Deputy County Counsel

12 Attorneys for County of Los Angeles
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pursuant to California Evidence Code section 452, judicial notice may be taken of the
3 following matters:

4 "(a) Regulations and legislative enactments issued by or under the authority of the
5 United States or any public entity in the United States.

6 (c) Official acts of the legislative, executive and judicial departments of the United
7 States and of any state of the United States. . .

8 (d) Records of (1) any court of this State or (2) any court of record of the United States
9 or any state of the United States."

10 In this case, the County asks the court to take judicial notice of the relinquishment form
11 signed by Rebecca Merrill relinquishing her interest in the dog on July 29, 2013, under Evidence
12 Code Section 452 (c), as an official record of the Los Angeles County Department of Animal Care
13 and Control, an agency charged with administering animal laws promulgated by the State and the
14 County, to regulate and protect animals and people. Evidence Code Section 452 (c) permits the
15 court to take judicial notice of the records of a local administrative agency (1 Witkin, Cal.
16 Evidence (4th ed. 2000) Judicial Notice, § 19, p.114; see e.g., *Town of Tiburon v. Bonander* (2009)
17 180 Cal. App. 4th 1057, 1075. This includes written documents of the agency. (*SC Manufactured*
18 *Homes, Inc. v. Liebert* (2008) 162 Cal. App. 4th 68, 82-83, fn.8; *Rodas v. Spiegel* (2001) 87 Cal.
19 App.4th 513, 518).

20 The County also asks the court to take judicial notice of ordinances relating to the
21 regulation and control of dangerous and vicious dogs found in the Los Angeles County Code, Title
22 10, Chapter 37, which is a legislative enactment of a public entity under California Evidence Code
23 section 452 (a). These ordinances are relevant to this case, since they are cited by and relied upon
24 by the parties in the papers filed with this court.

25 Finally, the County asks the court to take judicial notice of the Declaration of Richard H.
26 Polsky, PhD (Declaration), under Evidence Code section 452(d), permitting the court to take
27 notice of records of any court of this state. The Declaration was filed in connection with *Faten v.*
28 *County of Los Angeles* (2012) 209 Cal. App. 4th 543, LASC Case No. MC 021875, and is relevant

1 to this case, because it contradicts Dr. Polsky's opinion on dangerous dogs in this case.

2 **Exhibit A:** Relinquishment Form signed by licensed dog owner [Ev. Code § 452 (c)];

3 **Exhibit B:** Los Angeles County Code, Title 10, Chapter 37, Potentially Dangerous and
4 Vicious Dogs. [Ev. Code § 452 (a)]

5 **Exhibit C:** Declaration of Richard H. Polsky PhD (LASC Case No. MC 021875)
6 [Ev. Code § 452 (d)];

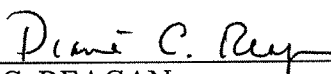
7 **CONCLUSION**

8 Based on the foregoing authority and the attached declaration of Diane C. Reagan, the
9 County respectfully asks the court to take judicial notice of the requested public agency record,
10 ordinances and court record in considering its ruling on the Motion for Preliminary Injunction.

11
12 DATED: August 28, 2013

Respectfully submitted,

13 JOHN F. KRATTLI
14 County Counsel

15 By 
16 DIANE C. REAGAN
17 Principal Deputy County Counsel

18 Attorneys for County of Los Angeles
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EXHIBIT A



COUNTY OF LOS ANGELES
DEPARTMENT OF ANIMAL CARE AND CONTROL



Animal Relinquishment Form / Forma de Renunciación al Animal

Please print/ Favor de Escribir con Letras de Molde

Activity/Receipt No.: # de Actividad/Recibo: A13-15520/A13-03666	Date: Fecha: 07/29/13	107249
Name: Nombre: REBECCA ANN BOSQUEZ MERRILL	Driver's License No: # de Licencia de Conducir: N5232697	
Address: Domicilio: 4511 EAST 25TH ST., APT. 96	Phone No.: # de Telefono: ()	
City: Ciudad: UNCASTER	State: Estado: CA	Zip: Codigo Postal: 93535
I am (check one): Yo soy (marque una): <input checked="" type="checkbox"/> the legal owner/ dueño legal <input type="checkbox"/> authorized to act as the legal agent for the owner/ autorizado legal para actuar de parte del dueño		

ANIMAL DESCRIPTION / DESCRIPCION DEL ANIMAL

Animal ID: Identificación del animal: A 4549802	Name: Nombre: JOJO
Breed/ Raza: PIT BULL/ROTTWEILER MIX	Sex/ Sexo: <input type="checkbox"/> Female / Femenino <input checked="" type="checkbox"/> Male / Masculino
Color: BRN/BLK	Species/ Especie: D
S/N Castrado/a: <input checked="" type="checkbox"/> Yes/Si <input type="checkbox"/> No	Age: Edad: 8 YRS
Reason / Razón: DECLARED VICIOUS	
Medical History/ Historial Medico	
Current Medical Problems/ Problemas Medicos Actuales: N/A	
Has this animal bitten anyone in the past ten (10) days? Ha mordido a alguien este animal en los últimos diez (10) días? <input type="checkbox"/> Yes/ Si <input type="checkbox"/> No	
Initials/ Iniciales:	

FEE SCHEDULE / PLAN DE CARGOS

<input type="checkbox"/> \$ per pick up / por recogida	\$
<input type="checkbox"/> Other Fees: Otros Cargos:	\$
TOTAL \$	

Except for animals that are irremediably suffering from a serious illness or severe injury, or newborn animals that need maternal care and have been impounded without their mothers, any animal relinquished by the purported owner that is of a species impounded by public or private shelters shall be held for the same holding periods, with the same requirements of care applicable to stray dogs and cats, and shall be available for owner redemption and adoption for the entire holding period. The holding period is four business days, not including the day of impoundment.

I declare under the penalty of perjury that I am the owner, or the owner's legal agent. I understand that unless this animal is irremediably suffering or is a newborn animal as described in the paragraph above, this animal will be held for the holding period and may be adopted by another person during the holding period. I also understand that this animal may be euthanized after the holding period for any reason. I authorize the Los Angeles County Department of Animal Care and Control to dispose of the remains in accordance with the County procedures.

Con la excepción de animales que estén sufriendo irremediablemente de una seria enfermedad ó de una herida grave, ó animales recién nacidos que necesiten cuidado maternal y que han sido incautados sin sus madres, cualquier animal rendido por el supuesto dueño que es de una especie incautado por refugios públicos ó privados serán detenidos por el mismo periodo de detención, con los mismos requerimientos de cuidado, aplicable a perros y gatos desviados, y serán disponibles para redimir por el dueño y adopción durante el periodo de detención entero. El periodo de detención son cuatro (4) días de negocio, sin incluir el día de incauto.

Yo declaro bajo la penalidad de perjurio, que yo soy el dueño o autorizado legal de parte del dueño. Yo entiendo que al menos que este animal este sufriendo irremediablemente ó sea un animal recién nacido como esta descrito en el párrafo de arriba, este animal será detenido por el periodo de detención y podrá ser adoptado por otra persona durante el periodo de detención. Yo también entiendo que a este animal se le puede realizar la eutanasia después del periodo de detención. Yo autorizo al Departamento de Cuidado y Control de Animales del Condado de Los Angeles que dispongan de los restos en acuerdo con los procedimientos del Condado.

Xm

SIGNATURE OF PERSON RELEASING ANIMAL/
FIRMA DE LA PERSONA RENUNCIANDO AL ANIMAL

R. DESAI #135

OFFICER'S NAME AND BADGE NUMBER/
NOMBRE Y NUMERO DE CELULA DEL OFICIAL

EXHIBIT B

Chapter 10.37
Potentially Dangerous and Vicious Dogs

10.37.010	.....	Purpose of this chapter
10.37.020	.....	Potentially dangerous dog--Definition
10.37.030	.....	Vicious dog--Definition
10.37.040	.....	Severe injury--Definition
10.37.050	.....	Enclosure--Definition
10.37.060	.....	Department--Definition
10.37.070	.....	Impounded--Definition
10.37.080	.....	Exemptions
10.37.090	.....	Right of entry and inspection
10.37.100	.....	Authority to seize and impound animal posing an immediate threat to public safety
10.37.110	.....	Potentially dangerous or vicious dog hearing
10.37.120	.....	Notice of determination and appeal from court hearing
10.37.121	.....	Notice of decision and judicial review of administrative decision
10.37.130	.....	Conditions of ownership of potentially dangerous dogs
10.37.140	.....	Consequences of vicious dog determination
10.37.150	.....	Compliance with conditions and consequences of violation of conditions
10.37.160	.....	Removal of designation
10.37.170	.....	Exceptions
10.37.180	.....	Infraction/misdemeanor penalty for dog bites

10.37.010 Purpose of this chapter.

Within the county of Los Angeles there are potentially dangerous and vicious dogs that have become a serious and widespread threat to the safety and welfare of the citizens of the county which should be abated. The provisions of this chapter set forth the procedures by which a dog is found to be a potentially dangerous dog or a vicious dog, thereby becoming subject to appropriate controls and other actions. This chapter is intended to supplement rather than supplant any other remedy available under state statute or county ordinance. (Ord. 2001-0042 § 2 (part), 2001.)

10.37.020 Potentially dangerous dog--Definition.

Potentially dangerous dog means any of the following:

- A. Any dog which, when unprovoked, on two separate occasions within the prior 36-month period, engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are off the property of the owner or custodian of the dog;
- B. Any dog which, when unprovoked, bites a person or otherwise engages in aggressive behavior, causing a less severe injury than as defined in Section 10.37.040;
- C. Any dog which, when unprovoked, has killed, seriously bitten, inflicted injury, or otherwise caused injury to a domestic animal off the property of the owner or custodian of the dog. (Ord. 2001-0042 § 2 (part), 2001.)

10.37.030 Vicious dog--Definition.

"Vicious dog" means any of the following:

- A. Any dog that engages in or has been found to have been trained to engage in exhibitions of fighting;
- B. Any dog which, when unprovoked, in an aggressive manner, inflicts severe injury on or kills a person;
- C. Any dog previously determined to be and currently listed as a potentially dangerous dog in Los Angeles County, or to be a dangerous or vicious dog in another jurisdiction, which, after its owner or custodian has been notified of this determination, continues the behavior described in section 10.37.020 or is maintained in violation of section 10.37.130 or other restrictions placed upon it by another jurisdiction. (Ord. 2011-38 § 1, 2011.)

10.37.040 Severe injury--Definition.

"Severe" injury means any physical harm to a human being that results in a serious illness or injury, including but not limited to a major fracture, muscle tears or disfiguring lacerations requiring multiple sutures or corrective or cosmetic surgery. (Ord. 2011-38 § 2, 2011.)

10.37.050 Enclosure--Definition.

"Enclosure" means a fence or structure suitable to prevent the entry of young children, and which is suitable to confine a potentially dangerous or a vicious dog in conjunction with other measures which may be taken by the owner or custodian of the dog. The enclosure shall be designed to prevent the animal from escaping. The animal shall be housed pursuant to section 597t of the Penal Code. (Ord. 2001-0042 § 2 (part), 2001.)

10.37.060 Department--Definition.

"Department" means the department of animal care and control. (Ord. 2001-0042 § 2 (part), 2001.)

10.37.070 Impounded--Definition.

"Impounded" means taken into the custody of the department. (Ord. 2001-0042 § 2 (part), 2001.)

10.37.080 Exemptions.

This chapter does not apply to humane society shelters, animal control facilities, or veterinarians or to dogs while utilized by any police department or any law enforcement officer in the performance of police work. (Ord. 2001-0042 § 2 (part), 2001.)

10.37.090 Right of entry and inspection.

A duly authorized employee or agent of the department or any law enforcement officer may enter and inspect private property in the manner as set forth in Section 10.12.210. Upon inspection, the department may act to enforce the provisions of this chapter. (Ord. 2001-0042 § 2 (part), 2001.)

10.37.100 Authority to seize and impound animal posing an immediate threat to public safety.

- A. If upon investigation it is determined by the animal control officer or law enforcement officer that probable cause exists to believe the dog in question poses an immediate threat to public safety, then the animal control officer or law enforcement officer may seize and impound the dog pending the hearing to be held pursuant to this chapter. The owner or custodian of the dog shall be liable for the costs and expenses of keeping the dog impounded if the dog is later adjudicated potentially dangerous or vicious. Such costs and expenses shall be paid prior to the release of the dog.
- B. When a dog has been impounded pursuant to subsection A and it is not contrary to public safety, the director of the department of animal care and control shall permit the animal to be confined at the owner's expense in a department-approved animal or veterinary facility. (Ord. 2011-0011 § 9, 2011.)

10.37.110 Potentially dangerous or vicious dog hearing.

A. Hearing

If an animal control officer or a law enforcement officer has investigated and determined that there exists probable cause to believe that a dog is potentially dangerous or vicious, the director of the department of animal care and control shall petition the Superior Court, within the judicial district wherein the dog is owned or kept, for a hearing, or shall conduct an administrative hearing, for the purpose of determining whether or not the dog in question should be declared potentially dangerous or vicious.

B. Notice of Hearing and Petition

Whenever possible, a complaint received from a member of the public which serves as the evidentiary basis for the animal control officer or law enforcement officer to find probable cause shall be sworn to and verified by the complainant and shall be attached to the petition. The director of the department of animal care and control shall notify the owner or custodian of the dog that a hearing will be held by the Superior Court, or that an administrative hearing will be held, at which time he or she may present evidence as to why the dog should not be declared potentially dangerous or vicious. The owner or custodian of the dog shall be served with notice of the hearing and a copy of the petition, either personally or by first class mail. The hearing shall

be held promptly within no less than five (5) working days nor more than ten (10) working days after the service of the notice upon the owner or custodian of the dog.

C. Conduct of Hearing

The hearing shall be conducted as an administrative hearing or a limited civil case pursuant to Code of Civil Procedure Section 85, et seq., and open to the public. The judicial officer or administrative hearing officer may admit into evidence all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. A jury shall not be available. The judicial officer or administrative hearing officer may find, upon a preponderance of the evidence, that the dog is potentially dangerous or vicious and shall make other orders or findings required or authorized by this chapter. The judicial officer or administrative hearing officer may decide all issues for or against the owner or custodian of the dog even if the owner or custodian fails to appear at the hearing.

D. Administrative hearing officer

If the dog owner is notified that an administrative hearing will be held, the hearing shall be conducted by a neutral hearing officer. The department may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who signed the petition or directed the seizure or impoundment of the dog, and is not junior in rank to that person(s). In the alternative, the department may utilize the services of a hearing officer from outside the department. (Ord. 2011-38 § 3, 2011.)

10.37.120 Notice of determination and appeal from court hearing.

- A. Following a court hearing conducted pursuant to Section 10.37.110, the owner or custodian of the dog shall be notified in writing of the determination and order issued, either personally or by first class mail, postage prepaid by the court. If the petitioner or the owner or custodian of the dog contests the determination, he or she may, within five (5) days of the receipt of the notice of determination, appeal the decision, which appeal shall be made to the Superior Court before a judge other than the judge who originally heard the petition. The fee for filing an appeal shall be the fee provided for by Section 31622(a) of the Food and Agricultural Code and shall be payable to the county clerk. The petitioner or the owner or custodian of the dog shall serve notice of the appeal upon the other party personally or by first class mail, postage prepaid.
- B. The court hearing the appeal shall conduct a hearing de novo, without a jury, and make its own determination as to potential danger and viciousness and make other orders authorized by this chapter, based upon the evidence presented. The hearing shall be conducted in the same manner and within the time periods set forth in Section 10.37.110. The court may admit all relevant evidence, including incident reports and the affidavits of witnesses, limit the scope of discovery, and may shorten the time to produce records or witnesses. The issue shall be decided upon the preponderance of the evidence.
- C. The court hearing the appeal may decide all issues for or against the owner or custodian of the dog even if the owner or custodian fails to appear at the hearing.
- D. The determination of the court hearing the appeal shall be final and conclusive upon all parties. (Ord. 2011-38 § 4, 2011.)

10.37.121 Notice of decision and judicial review of administrative decision

Following an administrative hearing conducted pursuant to Section 10.37.110, the department and the owner or custodian of the dog shall be notified in writing of the decision of the hearing officer, either personally or by first class mail. If the department or the owner or custodian of the dog desires to contest the decision, the department or the owner/custodian must notify the other party within five (5) days of the intention to seek judicial review of the decision. The party seeking judicial review by the Superior Court must comply with all requirements of Code of Civil Procedure Section 1094.5 et seq. (Ord. 2011-38 § 5, 2011)

10.37.130 Conditions of ownership of potentially dangerous dogs.

- A. The dog shall be properly licensed, micro chipped, and vaccinated at the owner's expense, prior to release to the dog's owner or custodian. The department may include the designation in the registration records of the dog, after the court has determined that the designation applies to the dog.
- B. The dog, while on the owner's property, shall, at all times, be kept indoors, or in a securely fenced yard or enclosure from which the dog cannot escape, and into which children cannot trespass. The yard or

enclosure must be inspected and approved in writing by the department prior to release of the dog to its owner or custodian.

- C. The dog may be off the owner's premises only if it is muzzled and restrained by a substantial leash, not exceeding six (6) feet in length, and if it is under the control of an adult capable of restraining and controlling the dog. At no time may the dog be left unattended while off the owner's premises.
- D. The owner or custodian of the dog shall notify the department immediately in the event the dog is at large, or has committed an attack on any person or animal, has been sold or otherwise disposed of, or has died.
- E. The dog must complete an obedience course for a minimum of ten (10) hours of training with the owner at the owner's expense within sixty (60) days after release of the dog to its owner or custodian. The course shall be a course approved by the department prior to release of the dog to the owner or custodian.
- F. The dog must be spayed or neutered at the expense of the owner or custodian prior to the release of the dog to its owner or custodian.
- G. The dog may be required to wear a bright fluorescent yellow collar visible at 50 feet in normal daylight, which will be provided by the department at the owner's expense.
- H. The owner or custodian of the dog may be required to maintain general liability insurance covering property damage and bodily injury caused by a potentially dangerous or vicious dog, with a combined single limit of \$300,000.00 per occurrence, and may be required to show proof of such insurance within fourteen (14) days after the court has made its determination.
- I. All charges for services performed by the department pursuant to this Section 10.37.130 and all fines shall be paid prior to the release of the dog to its owner or custodian. If said charges and fines are not paid within fourteen (14) days after the date the services are performed or the fines are ordered to be paid, the dog shall be deemed to be abandoned and may be disposed of by the department.
- J. If the determination that the dog is potentially dangerous under Section 10.37.020, is made pursuant to a court hearing, the judicial officer shall impose a fine on the owner not to exceed \$500.00 for each separate basis upon which the determination was made. The fine shall be paid to the department for the purpose of defraying the costs of the implementation of this chapter.
- K. A judicial officer or administrative hearing officer may impose such other reasonable conditions as are deemed necessary to protect the public safety and welfare. (Ord. 2011-38 § 6, 2011.)

10.37.140 Consequences of vicious dog determination.

- A. A dog determined to be a vicious dog may be destroyed by the department when it is found, after proceedings conducted under Section 10.37.110, that the release of the dog would create a significant threat to the public health, safety and welfare.
- B. If it is determined that a dog found to be vicious shall not be destroyed, the judicial officer or administrative hearing officer shall impose the conditions upon ownership of potentially dangerous dogs required by Section 10.37.130, the conditions required by this section, and any other conditions necessary to protect the public health, safety, and welfare.
- C. The enclosure that is required pursuant to subsection B of Section 10.37.130 shall be an enclosure which is enclosed on all sides, and which is locked by a padlock. It may be required to have a top and a cement floor. The enclosure must be approved in writing by the department.
- D. The owner or custodian of a vicious dog must give written notice of the vicious dog determination to United States Post Office (local branch) and all utility companies which provide services to the premises where the dog is kept. The owner or custodian shall provide a copy of the notice to the department within thirty (30) days after the court determination that the dog is vicious.
- E. The owner or custodian of the dog shall post one or more signs on the premises at a location(s) approved by the department stating that a dog which has been determined to be vicious resides on the premises.
- F. If the determination that a dog is vicious under Section 10.37.030, is made pursuant to a court hearing, the judicial officer shall impose a fine on the owner not to exceed \$1,000.00 for each separate basis upon which said determination was made. The fine shall be paid to the department for the purpose of defraying the cost of the implementation of this chapter.
- G. The owner of a dog determined to be a vicious dog may be prohibited from owning, possessing, controlling, or having custody of any dog for a period of up to three years, if it is found at the hearing conducted pursuant to the petition to declare the dog vicious, that ownership or possession of a dog by that person would create a significant threat to the public health, safety, and welfare. (Ord. 2011-38 § 7, 2011.)

10.37.150 Compliance with conditions and consequences of violation of conditions.

- A. The hearing officer or judicial officer who heard the petition to determine if a dog is dangerous or vicious may schedule follow-up hearing dates to ensure compliance with all conditions imposed.
- B. Consequences that may result from the failure of an owner or custodian of a dog released after a hearing pursuant to Section 10.37.110 or Section 10.37.120 to comply with any of the conditions imposed under Section 10.37.130 or Section 10.37.140 include, but are not limited to the following:
 - 1. The failure to comply with any condition is a misdemeanor punishable by a fine not exceeding \$1,000.00 or by imprisonment in the County Jail for a period not exceeding six months, or by both such fine and imprisonment;
 - 2. A violation of any part of administrative decision or court order may be the subject of a civil action for injunctive relief to enjoin the person who violated the decision or order. The filing and prosecution of an action of injunctive relief shall not limit the authority of the County to take any other action permitted by law;
 - 3. A violation of an administrative decision or court order following a determination that a dog is potentially dangerous, may result in the filing of an action to determine if the dog is vicious under Section 10.37.030 C. (Ord. 2011-38 § 8, 2011)

10.37.160 Removal of designation.

If there are no additional instances of the behavior described in Section 10.37.020 within a 36-month period from the date of designation as a potentially dangerous dog, the dog shall be removed from the list of potentially dangerous dogs. The dog may, but is not required to be, removed from the list of potentially dangerous dogs prior to the expiration of the 36-month period if the owner or custodian of the dog demonstrates to the department that changes in circumstances or measures taken by the owner or custodian, such as the training of the dog, have mitigated the risk to the public safety. (Ord. 2001-0042 § 2 (part), 2001.)

10.37.170 Exceptions.

- A. No dog may be declared potentially dangerous or vicious if any injury or damage is sustained by a person who, at the time the injury or damage was sustained, was committing a wilful trespass or other tort upon premises occupied by the owner or custodian of the dog, or was teasing, tormenting, abusing, or assaulting the dog, or was committing or attempting to commit a crime. No dog may be declared potentially dangerous or vicious if the dog was protecting or defending a person within the immediate vicinity of the dog from an unjustified attack or assault. No dog may be declared potentially dangerous or vicious if an injury or damage was sustained by a domestic animal which at the time of the injury or damage was sustained was teasing, tormenting, abusing or assaulting the dog.
- B. No dog may be declared potentially dangerous or vicious if the injury or damage to a domestic animal was sustained while the dog was working as a hunting dog, herding dog, or predator control dog on the property of, or under the control of, its owner or custodian, and the damage or injury was to a species or type of domestic animal appropriate to the work of the dog. (Ord. 2001-0042 § 2 (part), 2001.)

10.37.180 Infraction/misdemeanor penalty for dog bites.

In addition to the conditions and restrictions imposed on the ownership of potentially dangerous and vicious dogs set forth in this chapter, an owner or custodian of a dog who permits, allows or causes a dog to run, stray or be uncontrolled or at large upon a public street, sidewalk, park or other public property, or in or upon the private property of another person, is guilty of a public offense punishable as an infraction or misdemeanor if such dog bites, attacks or causes injury to any person or to a domestic animal. (Ord. 2001-0042 § 2 (part), 2001.)

EXHIBIT C

1 Howard S. Blumenthal, Esq.
2 R. REX PARRIS LAW FIRM
3 42220 10th Street West, Suite 109
4 Lancaster, CA 93534
(661) 949-2595
State Bar No. 185777

5 Attorney for Plaintiff

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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES, NORTH DISTRICT
10

11 KAMERON FATEN, DEVIN FATEN,
12 JORDAN FATEN, MINORS, BY AND
13 THROUGH THEIR GUARDIAN AD
LITEM, MELISSA FATEN,

14 Plaintiffs,

15 v.

16 COUNTY OF LOS ANGELES, A
17 GOVERNMENTAL ENTITY, JOHN
BOWLES, DANIEL MILLER, and DOES
1 through 50, inclusive,

18 Defendants.
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22 AND RELATED ACTIONS
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CASE NO.: MC021875

DECLARATION OF RICHARD H.
POLSKY, PH.D.

[Filed Concurrently with Opposition to
Motion for Summary Judgment of
County of Los Angeles]

Date : April 3, 2012
Time : 8:30 A.M.
Dept. : A11

*Assigned for all purposes to Honorable
Randolph Rogers - Dept. A11*

Complaint Filed : August 23, 2010
Trial Date : August 3, 2012

22 I, Richard H. Polsky, Ph.D., declare that if I am called to testify, I could and would
23 competently testify to the following:

24 1. I have been retained by attorney Howard S. Blumenthal, Esq. from the R. Rex
25 Parris Law Firm as a consultant and testifying expert in animal behavior. I have been asked to
26 opine about issues that fall within my expertise in the action entitled *Faten vs. County of Los*
27 *Angeles*.
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DECLARATION OF RICHARD H. POLSKY, PH.D.

1 2. I obtained a Ph.D. from the University of Leicester, Leicester, England in animal
2 behavior science. I also completed and was awarded a certificate of completion for six years of
3 postdoctoral study in animal behavior science at the University of California, Los Angeles. Since
4 1981, I have been President of Animal Behavior Counseling Services, Inc. where I have
5 provided consultation and training services to pet owners experiencing behavioral problems in
6 their dogs and cats. I have personally trained and counseled over 10,000 dogs, cats, and their
7 owners. I am certified as an applied animal behaviorist by the Animal Behavior Society, and I
8 am one of approximately 50 applied animal behaviorists in the United States certification from
9 this organization. The Animal Behavior Society is the foremost professional organization in the
10 United States dealing with the scientific study of animal behavior. I presently have professional
11 affiliations with the Animal Behavior Society, International Society of Applied Ethology,
12 American Association for the Advancement of Science, and the American Veterinary Society
13 of Animal Behavior. I have authored numerous articles and peer-reviewed publications
14 regarding animal behavior, and have given many speaking engagements to veterinary
15 professional organizations and animal control agencies about dog and cat behavior. I have been
16 retained by attorneys as a dog behavior expert on more than 200 occasions. I have given at least
17 110 depositions, and have testified as an animal behavior expert on more than 50 occasions in
18 state and federal courts throughout the United States and Canada. My Curriculum Vitae is
19 attached as Exhibit A.

20 3. My professional experience also includes being retained by the Los Angeles City
21 Animal Care and Control. I assisted this organization in establishing the initial behavioral
22 guidelines and behavioral criteria for the evaluation and investigation by department personnel
23 for dangerous dog hearings. One focus of this work was to educate animal control officers about
24 the potentially dangerous nature of pit bull dogs. Moreover, by way of my contact with animal
25 control officers throughout Southern California, I have come to understand that protecting the
26 public from aggressive and dangerous pit bull dogs, as well as other breeds, is an important part
27 of animal control regulation.

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1 4. I have been provided the following documentation for review in this case: (a) Los
2 Angeles County municipal code Title 10 code sections 10.12, 10.37 and 10.40 and their
3 subsections; (b) Defendant's supplemental responses to request production; (c) Defendants
4 responses to special interrogatories; (d) Defendants second supplemental response to request for
5 production; (e) Defendant's responses to special interrogatories; (f) Defendant's statement of
6 undisputed facts; (g) Defendant's motion for summary judgment; (h) photographs of deceased
7 goats owned by Dawn Harrison; (I) Photographs of the dog bite injuries to Kameron Faten; (j)
8 Photographs of the property owned by John Bowles located at 10640 E. Ave. R 14, Little Rock,
9 CA, including the approximate location where the incident occurred; (k) Photographs of pit bulls
10 kept at the residence owned by John Bowles; (I) Memos entered into the animal control records
11 by animal control officer Lt. Alejandro Flores dated September 3, 2009 and September 5, 2009;
12 (m) Declaration of Ersie Franklin; (n) animal control incident report regarding September 3,
13 2009 attack on Kameron Faten; (m) Los Angeles County Department of Animal Care and
14 Control Policy and Procedure Manual, including Dog Behavior Assessment Report.

15 5. In addition, I have reviewed the following deposition testimony and exhibits
16 attached to these depositions: (a) Alejandro Flores, volume 1, volume 2, volume 3; (b) Dawn
17 Harrison, volume 1, volume 2; (c) Cesar Chavez; (d) Derek Ames; (e) Jesse Harrison; (f) Jordan
18 Faten; (g) Kameron Faten; (h) Melissa Faten; (I) Lt. Raul Rodriguez; (j) Devin Faten; (k)
19 Anthony Williams; (I) Adolfo Garcia; (m) Dakota Buehre.

20 6. I am familiar with the behavioral tendencies of the breeds known as the
21 American pit bull terrier and the Staffordshire Terrier, and dogs mixed with these breeds.
22 Collectively these dogs are known as "pit bull type dogs". I have published articles about the
23 temperamental and behavioral features of these kind of dogs. I personally have trained and
24 worked with over 1000 pit bull type dogs.

25 7. Pit bull type dogs are exceptionally strong, they possess a greater bite force than
26 probably any other type of dog, they have tremendous stamina, and unlike nearly all other type
27 of dogs, pit bull type dogs will develop heightened aggressive and dangerous behavioral
28 tendencies towards unfamiliar people and animals if they are not cared for properly and

1 permitted to roam residential areas in an uncontrolled manner. These facts are well understood
2 by the animal control agencies I have worked with.

3 8. Pit bull type dogs can readily inflict severe injuries and fatalities onto people and
4 other animals, such as domestic livestock. Pit bull maulings have frequently been publicized in
5 the news and on the Internet, and the subject of technical reports in the epidemiological and
6 scientific literature. Pit bull type dogs kill more people annually in the United States than any
7 other type of dog. Pit bull dogs inflict more serious injury to people than any other type of dog
8 in the United States. The fact that these kinds of dogs present a serious danger to public safety,
9 particularly when they are not properly cared for, not kept under sufficient control, and allowed
10 to roam, is well-known by animal control personnel. The animal control agencies I have worked
11 with understand the need to carefully evaluate, investigate, and take necessary action against
12 potentially dangerous pit bull type dogs.

13 9. Many adult pit bull type dogs, particularly those which are allowed to regularly
14 roam neighborhoods in an uncontrolled manner, as was the case for the pit bulls living at the
15 premises of John Bowles, possess heightened aggressive proclivities both towards towards
16 people and animals. This behavioral trait coupled with the capacity of this type of dog to inflict
17 severe injury or death onto a person or another animal, make many pit bull type dogs extremely
18 dangerous, particularly if they are allowed to roam neighborhoods in an uncontrolled manner.
19 In my contacts with animal control agencies, I have found that nearly all animal control officers
20 are cautious about pit bull type dogs knowing that these kinds of dogs can be unusually
21 aggressive and dangerous, particularly if they are not cared for and properly controlled.

22 10. On September 3, 2009, eight-year-old Kameron Faten was attacked in an
23 unprovoked fashion by the pit bull dogs living on the property of John Bowles. John Bowles
24 resided with these dogs at 10640 E. Ave. R 14, Littlerock, California. Kameron Fatan resided
25 with his family near the residence of John Bowles. Kameron Faten was attacked by two pit bull
26 dogs on the street near the property of Bowles in midafternoon after exiting from a school bus.

27 11. The unprovoked attack on this child should have been foreseen by Los Angeles
28 County Department of Animal Care and Control (herein referred to as LACACC). LACACC

1 knew pit bull type dogs were living on the property of John Bowles, and LACACC had received
2 complaints about the dangerous and aggressive nature of the pit bulls residing on the property
3 of John Bowles prior to September 3, 2009.

4 12. The presence of these pit bull dogs on the property of John Bowles created a clear
5 and present danger to public safety. LACACC failed to take the necessary corrective measures
6 to mitigate the danger these dogs presented to the public prior to September 3, 2009. I believe
7 the attack on Kameron Faten happened because LACACC exercised extremely poor judgment
8 with respect to their duty to protect the public from dangerous and vicious dogs.

9 13. The pit bull dogs residing at John Bowles residence were aggressive in nature and
10 they could not be controlled. The evidence I have reviewed clearly indicates that these dogs
11 presented a danger to public safety prior to September 3, 2009. This was demonstrated in the
12 aggressive displays by these dogs towards people and other animals prior to September 3, 2009.
13 For example, prior to September 3, 2009, these pit bull dogs:

- 14 (a) Aggressively chased a Los Angeles County official;
- 15 (b) On many occasions threatened a neighbor, Jesse Harrison, who protected himself
16 by kicking the dogs;
- 17 (c) On May 25, 2009 these dogs entered the enclosed backyard Dawn Harrison and
18 brutally attacked and killed two goats. Note that goats kept as livestock are
19 domesticated animals, much like companion dogs, cats and horses and other
20 mammalian livestock such as swine, cattle, and lambs.
- 21 (d) In addition, these dogs regularly escaped from the Bowles' property and roamed
22 the neighborhood instilling fear and concern to the neighbors who lived near the
23 property of John Bowles. For example, (a) Elsie Franklin declared that these pit
24 bull dogs were regularly roaming the neighborhood and they pose a threat to
25 herself and to her family. She declared that the pit bull dogs would growl and that
26 she feared being attacked by these dogs, and that her daughter Rainey on a regular
27 basis was threatened and menaced by these dogs. (b) Dakota Buehre testified that
28 the dogs were constantly roaming, they frequently barked loudly, and that he

1 warned people to carry a stick for protection whenever they came near the
2 property of John Bowles. (c) Anthony Williams testified that the dog involved on
3 the attack on Kameron Faten regularly roamed the neighborhood, that these pit
4 bull dogs regularly escaped the Bowles' property by jumping over the fence, that
5 he and his father had complained to animal control on approximately 4 or 5
6 occasions, and that these pit bull dogs had mutilated a cat and a puppy.

7 14. Animal control personnel knew that uncontrolled pit bull dogs roaming residential
8 neighborhoods presented a danger to public safety. For example, animal control officer Adolfo
9 Garcia testified that loose pit bulls were a danger to public safety and that complaints received
10 by animal control about loose pit bulls should be given high priority. Note that unrestrained,
11 roaming pit bull dogs not under the control of a caretaker are substantially more dangerous than
12 a single dog acting on its own. It is my understanding that attacks on people and other animals
13 by uncontrolled, roaming pit bull dogs acting together is a major concern to animal control
14 agencies throughout this country and throughout the world. The heightened propensity for
15 individual dogs to become more readily aggressive when they are together is a fact about animal
16 behavior that I have frequently mentioned during my lectures to animal control personnel and
17 to veterinarians. In this regard, I note that the attack on Kameron Faten happened by a pair of
18 pit bulls.

19 15. Prior to September 3, 2009, Los Angeles County animal care and control had
20 incontrovertible knowledge about the potentially dangerous nature of these pit bull dogs, and
21 that these dogs were not properly controlled. The discovery I have reviewed indicates that there
22 were between six and nine complaints received by animal control prior to September 3, 2009.
23 Some of these complaints had to do with Bowles' pit bull dogs roaming the neighborhood in an
24 uncontrolled fashion, and others had to do with these pit bull dogs acting aggressively towards
25 people, children, and other animals. The first complaint was documented in April 2007 and the
26 last complaint prior to the September 3, 2009 incident was made by Dawn Harrison in June 2009
27 who complained that the dogs who killed her goats were again loose in the neighborhood.

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1 16. Further documentation which supports the incontrovertible knowledge LAACC
2 possessed about the dangerous nature of these dogs is found in the deposition testimony of
3 animal control officer Cesar Chavez. He testified that prior to September 3, 2009 these dogs
4 were "terrorizing" the neighborhood. Further, shortly after September 3, 2009, supervising
5 animal control officer, Lt. Alejandro Flores in a memo dated September 5, 2009 stated "upon
6 further research on this complaint, found extensive complaints about these dogs. It is deemed
7 imperative to impound these dogs for public safety pending formal charges and appearance".
8 This conclusion could have been made prior to and without Kameron Fatan being attacked. It
9 is apparent that prior to September 3, 2009 Lt. Flores was not made aware of the dangerous
10 nature of the dogs on the Bowles' property by his subordinate animal control officers.

11 17. The September 3, 2009 attack on Kameron Faten should have been fully realized
12 by LACACC prior to September 3, 2009. The complaints LACAAC received about these pit bull
13 dogs, as noted above, were sufficient to alert LAACC about the potentially dangerous nature of
14 these dogs. The attack on Kameron Faten was a foreseeable event. An animal control officer
15 should have brought this to the attention of Lt. Flores prior to September 3, 2009 and he would
16 have initiated an investigation which would have prevented the attack. The investigation would
17 have led either to the pit bulls being impounded or restrictions placed on their ability to get off
18 the property of John Bowles.

19 18. I have carefully reviewed Title 10 code sections applicable to this case.

20 (a) Code section 10.37.020 specifies law pertaining to potentially dangerous dogs.
21 Subsection (A) of Code 10.37.020 defines a potentially dangerous dog as "any dog
22 which on two separate occasions within the prior 36 month period, engages in any
23 behavior that requires a defensive action by any person to prevent bodily injury
24 when the person and the dog are all the property of the owner or custodian of the
25 dog". Subsection (C) of Code 10.37.020 further defines a potentially dangerous
26 dog as "any dog which, when unprovoked, has killed, seriously bitten, inflicted
27 injury, or otherwise caused injury to a domestic animal off the property of the
28 owner or custodian of the dog".

1 (b) Code section 10.37.130, sections (b), (c) and (d) define the corrective measures
2 that should be undertaken with potentially dangerous dogs. These include: (1)
3 keeping the dog indoors at all times while it is on its owner's property, or in a
4 securely fenced yard from which the dog cannot escape and into which children
5 cannot trespass, and the yard or enclosure must be inspected and approved in
6 writing by the department prior to release of the dog to its owner or custodian. (2)
7 if the dog is taken off the owner's premises it must be muzzled and restrained by
8 a substantial leash not exceeding 6 feet in length, and the dog must be under the
9 control of an adult capable of restraining and controlling the dog; (3) at no time
10 may the dog be left unattended while off the owner's premises; (4) having the
11 owner notify animal control immediately in the event the dog(s) is at large, or has
12 committed an attack on any person or animal, or has been sold or otherwise
13 disposed of, or has died.

14 (c) Code section 10.40.010 (w) states that "no animal shall be allowed to constitute
15 or cause a hazard, or be a menace to the health, peace or safety of the community".

16 19. The codes mentioned above and the corrective measures specified are consistent
17 with the facts of this case. An investigation and corrective measures that should have been
18 undertaken prior to September 3, 2009. It is my opinion that the unprovoked and brutal killing
19 by these dogs of the goats kept by Dawn Harrison, combined with the nature of the past
20 complaints which LACACC received and knew about concerning these dogs, should have given
21 sufficient notice to LACACC that these dogs were undoubtedly "potentially dangerous" and a
22 "menace to public safety". This knowledge therefore provided sufficient basis to satisfy probable
23 cause for further investigation and implementation of corrective action by LACACC prior to
24 September 3, 2009. It is my opinion that had some or all of the above-mentioned corrective
25 measures been taken and enforced, this would have prevented the attack on Kameron Faten.

26 20. Given that probable cause existed prior to September 3, 2009, an inspection of the
27 property where these dogs resided, or an inspection of the dogs, should have been undertaken
28 by LACACC. If they did not know the specific dogs involved in the previous complaints, then

1 further behavioral investigation would have been able to identify the likely dogs. LACACC
2 utilizes behavioral testing to identify potentially dangerous dogs.

3 21. A physical inspection of the property would have revealed the need for immediate
4 corrective action, and implementation should have been made with respect to the corrective
5 measures specified in code section 10.37.130, as mentioned above in paragraph 18(b). A
6 physical inspection of the property would have made it apparent to animal control for the need
7 to build higher fences around the property of Bowles, particularly in the front of the house. An
8 inspection of the property would also have revealed other escape routes possibly used by these
9 dogs. An inspection would have also shown the conditions in which these dogs lived, and these
10 were marginal at best. For example, the backyard was littered with debris. Canvassing the
11 neighborhood to discover the concerns neighbors had about these dogs would have given
12 LACACC further understanding of the need for immediate corrective action to protect the public
13 from these dogs. Their failure to do this made them derelict in their duties.

14 22. Moreover, in addition to the above, prior to September 3, 2009, LACACC should
15 have seized these pit bull dogs pursuant to code section 10.12.090(c), impounded them, and then
16 subjected these dogs to behavioral testing. LACAAC had the techniques in place to render
17 behavioral evaluations. Seizing these dogs or preventing them from interacting with the public
18 would have been the best options to protect the public from these dangerous dogs.

19 23. On the contrary, LACACC exercised poor judgment by only posting warning
20 notices on the door of John Bowles. Leaving notices and warnings on the door of John Bowles,
21 or sending notices through the mail, was insufficient in this instance. Given the fact pattern of
22 this case, a full investigation should have been made and corrective measures taken, such as
23 removing the dogs from the property of John Bowles, or prior to September 3, 2009, pursuing
24 a potentially dangerous dog investigation which would have led to restrictions as specified in
25 code section 10.37.130.

26 24. Given the experience of Lt. Flores and his position in the department, Flores
27 should have been notified by animal control officers about the dangerous conditions at the
28 Bowles' residence prior to September 3, 2009. If he had this knowledge he could have made the

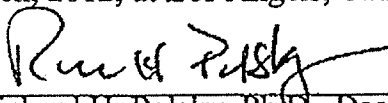
1 same conclusions, as stated in his September 5, 2009 memo, before September 3, 2009.

2 25. As stated above, corrective measures should have been undertaken by LACACC
3 much earlier, and no later than immediately after these dogs attacked and killed the goats
4 belonging to Dawn Harrison. The failure of LACACC to act in a manner that would have
5 adequately protected the public from these dangerous and vicious dogs in a timely manner,
6 surely made LACACC derelict in their duties to the public they served.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

9 Executed this 19th day of March, 2012, at Los Angeles, California.

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Richard H. Polsky, Ph.D., Declarant

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DECLARATION OF SERVICE

Case No. BS 144497

STATE OF CALIFORNIA, County of Los Angeles:

I am employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action. My business address is 648 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, California 90012-2713.

That on Wednesday, August 28, 2013, I served the attached

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO
MOTION FOR PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND
AUTHORITIES, DECLARATION OF DIANE C. REAGAN**

upon Interested Party(ies) by placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed ☒ as follows ☐ as stated on the attached mailing list:

Talitha Davies Wegner, Esq.
Davies Wegner, A Law Corporation
11661 San Vicente Boulevard, Suite 710
Los Angeles, California 90049
Email: Talitha@davieswegner.com

(BY MAIL) by sealing and placing the envelope for collection and mailing on the date and at the place shown above following our ordinary business practices. I am readily familiar with this office's practice of collection and processing correspondence for mailing. Under that practice the correspondence would be deposited with the United States Postal Service that same day with postage thereon fully prepaid.

(BY ELECTRONIC SERVICE) Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed on the service list.


I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 28, 2013, at Los Angeles, California.

Verzhine Nagapetyan

Type or Print Name of Declarant

and, for personal service by a Messenger Service,
include the name of the Messenger Service


Signature